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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ASSOCIATED PRESS, Plaintiff,	**ECF CASE**
- v.-	DECLARATION OF KAREN L. HECKER
UNITED STATES DEPARTMENT OF DEFENSE, Defendant.	05 Civ. 5468 (JSR)

Associated Press v. United States Department of Defense Doc. 13

KAREN L. HECKER hereby declares, pursuant to 28 U.S.C. § 1746, as follows:

1. I am an Associate Deputy General Counsel in the Office of General Counsel of the United States Department of Defense ("DOD"). In that capacity, I am responsible for, among other things, overseeing litigation involving the DOD. I am familiar with plaintiff's November 16, 2004 and January 18, 2005 Freedom of Information Act (FOIA) requests that are the subject of this action, and with the documents produced by the DOD in response to those requests. Unless otherwise indicated, the statements in this declaration are based upon my personal knowledge and information obtained by me in the course of my official duties.

2. The purpose of this declaration is (i) to describe the search for documents the Department of Defense conducted in response to plaintiff's November 16, 2004 and January 18, 2005 requests under the Freedom of Information Act (FOIA), (ii) to describe the nature of the information withheld from production in this case and the basis for that withholding under Exemptions 5, 6 and 7(C) of the Freedom of Information Act, 5 U.S.C. § 552(b)(5), (6) and 7(C), and (iii) to place before the Court certain documents referred to in DOD's memorandum of law in support of its motion for summary judgment.

Documents Responsive to the Request for Certain Administrative Review Board Records

3. **Background Information on Administrative Review Boards and Transfer/Release Decisions**

a. Administrative Review Boards (ARBs) for detainees held by DOD at U.S. Naval Base, Guantanamo Bay, Cuba, are conducted by the Office for the Administrative Review of the Detention of Enemy Combatants (OARDEC), a component of the DOD.[1] The ARB process annually assesses whether an enemy combatant continues to pose a threat to the United States or its allies, or whether there are other factors bearing upon the need for continued detention. *See* Order of then-Deputy Secretary of Defense Paul Wolfowitz (hereinafter "Deputy Secretary Order") at Exhibit 1 and "Implementation of Administrative Review Procedures for Enemy Combatants

[1] In addition to being responsible for the ARB process, OARDEC handles the Combatant Status Review Tribunals (CSRTs) conducted for each detainee held by the DOD at Guantanamo. These are fact-based proceedings which determine whether these detainees continue to meet the criteria to be designated as an enemy combatant. Between August 2004 and late March 2005, CSRT proceedings were held and finalized for 558 detainees at Guantanamo. Thirty-eight of those detainees were found to no longer meet the criteria to be classified as enemy combatants.

Detained at U.S. Naval Base Guantanamo Bay" (hereinafter "Implementing Directive") at Exhibit 2. As noted by then Deputy Secretary of Defense Wolfowitz:

> The law of war permits the detention of enemy combatants until the end of an armed conflict [in order to] prevent[] the enemy from rejoining the conflict. It does not require the use of a review process to support continued detention. Nevertheless, to address some unique and unprecedented characteristics of the current conflict, DOD has determined, as a matter of policy, to implement these [ARB] procedures. *See* Exhibit 1 at paragraph 1.

The ARB procedures "encompass an administrative proceeding for consideration of all relevant and reasonably available information to determine whether the enemy combatant represents a continuing threat to the U.S. or its allies in the ongoing armed conflict against Al Qaeda and its affiliates and supporters (e.g., Taliban) and whether there are other factors that could form the basis for continued detention (e.g., the enemy combatant's intelligence value and any law enforcement interest in the detainee).... This process is non-adversarial. It provides an enemy combatant the opportunity to review unclassified information relating to his continued detention, and to appear personally to present information relevant to his continued detention, transfer or release." *See* Exhibit 2 at paragraph 1c.

b. When the ARB process was created in June 2004, then Deputy Secretary of Defense Wolfowitz appointed the Secretary of the Navy (Gordon England) as the "Designated Civilian Official" (hereinafter DCO), to operate and oversee the ARB process and ultimately make the final decision whether to release, transfer or continue to detain the individual, as noted below. *See* http://www.defenselink.mil/releases/2004/nr20040623-0932.html (A true and accurate copy is attached as Exhibit 3). Since that time, Mr. England has been appointed to replace Mr. Wolfowitz as the Deputy Secretary of Defense. He continues to serve as the DCO of the ARB process.

c. The ARB is composed of three military officers appointed by the DCO. Each ARB panel must include a Presiding Officer who carries a service grade of O-6 (equivalent to a GS-15) and at least one officer with experience in the field of intelligence. Each must possess at least at TOP SECRET security clearance. *See* Exhibit 2 at Enclosure (3), paragraph 2a. They are assigned to serve if, in the DCO's view, they are "qualified for the duty by reason of education, training, experience, length of service, temperament, and objectivity." *Id.*

d. Sufficiently in advance of the board so as to permit him an opportunity to prepare his presentation to the ARB, the detainee is provided notice of the board and an unclassified written summary that contains the primary factors favoring his continued detention and the primary factors favoring his release or transfer. *See* Exhibit 2 at Enclosure (3), paragraph 3a and Enclosure (4), paragraph 1h. This document is provided to the enemy combatant in his native language and in English. *See* Exhibit 2 at Enclosure (4), paragraph 1j. To assist in this process, the DCO has assigned an "Assisting Military Officer" (AMO) to assist the detainee in reviewing the unclassified summary and in preparing for and presenting information to the ARB. The AMOs are assigned to serve if, in the DCO's view, they are "qualified for the duty by reason of education, training, experience, length of service, temperament, and objectivity." The AMO must carry a service grade of at least O-4 (equivalent to a GS-13). *See* Exhibit 2 at Enclosure (3), paragraph 2c.

e. The enemy combatant is provided a meaningful opportunity to be heard by the ARB and to present information to it. He can elect to appear in person before the ARB. He can also provide a written statement or other documents to the ARB by providing this information to his AMO or directly to the ARB during the proceeding. If an enemy combatant elects not to attend his ARB, the

ARB will proceed in his absence. *Id.* at paragraph 3e. There are no witnesses at the ARBs. *Id.* at paragraph 3d. Members of the press attended 30 of the ARB proceedings, conditioned on their agreement to follow the ground rules for media access to ARBs.

f. If an enemy combatant participated in his ARB, a summarized transcript of that portion of the proceeding is prepared. For a short period at the beginning of the ARB process, a transcript was also prepared even when the enemy combatant did not attend his ARB. The transcript in such a case would simply reflect the absence of the enemy combatant and then the closing of the unclassified session. Shortly after beginning the ARB process, OARDEC stopped creating transcripts when the enemy combatant was absent. Other than as described above, no transcripts of any portions of the ARBs have been generated by DOD.

g. Based on its review of this information and criteria described in Enclosure (3) to the Exhibit 2, the ARB will recommend that individual detainees be released, be transferred or continue to be detained by the DOD. The recommendation by the ARB is memorialized in a document entitled "Record of Proceedings and Basis for ARB Decision." This document contains both classified and unclassified material.

h. The ARB's recommendation is forwarded to the Designated Civilian Official (DCO), who will ultimately make the decision on whether to (1) transfer the detainee for release to his home country or an appropriate third country, (2) transfer the detainee to the control of his home country or an appropriate third country when that country is prepared to take the steps necessary to ensure that the detainee will not pose a continuing threat to the United States, or (3) continue to detain the individual under DOD control. Following his review of the ARB's recommendation and supporting documentation, the DCO makes a determination on whether the detainee is eligible for transfer or whether he should remain under DOD control for another year, based on the criteria expressed in Exhibit 2. The DCO's determination is reflected in an action memorandum.

i. If the DCO determines that continued DOD detention is warranted, the enemy combatant will remain in DOD control and a new review date will be scheduled to ensure an annual review of the enemy combatant's status.

j. If the DCO believes that the enemy combatant can be transferred to another country as noted in paragraph h(1) and h(2) above, that transfer proposal is forwarded to interested United States Government agencies. *See* Declaration of Matthew Waxman[2] at paragraph 6, attached as Exhibit 4. Those agencies are given an opportunity to provide any input that would be helpful to the DCO as he considers whether to retain the detainee under DOD control. In the majority of these cases, the DOD intends to return the detainee back to his country of origin or nationality. Upon such a return, the detainee becomes the responsibility of the receiving country and that country will have indicated a willingness to accept responsibility for ensuring, consistent with its laws, that the detainees will not pose a continued threat to the United States and its allies. *See* Waxman Declaration at paragraph 3. The DOD then undertakes a specific process, typically involving the Department of State (DOS), in which appropriate assurances regarding the detainee's return and his treatment are sought from the country to whom the transfer of the detainee is proposed. *See*

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[2] At the time he executed this declaration, Mr. Waxman served as the Deputy Assistant Secretary of Defense for Detainee Affairs in the DOD. The Office of Detainee Affairs, which he supervised, is responsible for providing policy advice to the Under Secretary of Defense on matters regarding detainees in DOD control. *See* Exhibit 3 at paragraph 1. Mr. Waxman has since left this position but his declaration is still an accurate reflection of United States government policy and practice regarding detainee transfers. This document was admitted in numerous Guantanamo detainee habeas cases pending in District Court in the District of Columbia.

Waxman Declaration, at Exhibit 4, paragraph 6. If the appropriate assurances are not obtained, the transfer of the detainee will not occur and the transfer determination of the DCO will not be effectuated. The "ultimate decision to transfer a detainee … is made with the involvement of senior United States government officials [and] the Secretary of Defense or his designee [here the DCO] ultimately approves a transfer deemed to be appropriate." *Id.* at paragraph 7. Decisions to effectuate the DCO's transfer determination are "made on a case-by-case basis, taking into account the particular circumstances of the transfer, the country, and the detainee concerned, as well as any assurances received from the country." *Id.* at paragraph 7. As Mr. Waxman noted, "circumstances have arisen in the past where the DOD elected not to transfer detainees to their country of origin because of torture concerns," despite having an initial DCO determination to transfer those detainees. *Id.* The Director of OARDEC is required to keep the DCO informed of ongoing ARB proceedings "and provide him feedback … on … the agreed upon transfer conditions. *See* Exhibit 2 at Enclosure (2), paragraph 2. Given all this, the DOD considers the action memorandum signed by the DCO to be a predecisional and deliberative document. The DCO's determination that a particular detainee can be transferred to a particular country is the beginning of a deliberative process that may result in a decision to transfer the detainee, not the end of such a process. Until the diplomatic discussions are complete and found to be satisfactory under DOD policy and practice, as reflected in the Prosper Declaration and described above, the DCO cannot make the actual decision to send the detainee home and the DOD will not authorize logistical arrangements to be made or implemented for that transfer. Accordingly, the DCO memorandum predates the actual decision to transfer a detainee The DCO memorandum is an essential link in the ultimate process and reflects the DCO's views regarding the possible outcome of that decision.

k. In obtaining the required assurances for cases where a detainee is to be transferred as noted in paragraph h(1) and h(2) above, the DOD requests the assistance of the Department of State in initiating transfer discussions with the foreign government concerned. *See* Declaration of Ambassador-at-Large Pierre-Richard Prosper[3] at Exhibit 5 at paragraph 6. *Id.* at paragraph 1. As noted in this Declaration, "the purpose of those [transfer] discussions is to learn what measures the receiving government is likely to take to ensure that the detainee will not pose a continuing threat to the United States or its allies and to obtain appropriate transfer assurances." *Id.* at paragraph 6. These assurances include the assurance of humane treatment and handling of the detainee in accordance with the international obligations of the country accepting transfer. *Id.* Ambassador Prosper's declaration describes the specific process undertaken to obtain the required assurances in individual cases and how the United States government evaluates those assurances in particular cases. *Id.* at paragraphs 7-8.

l. The declarations of both Ambassador Prosper and Mr. Waxman reflect that transfers of detainees are extremely sensitive matters that involve diplomatic relations with other countries, as well as the law enforcement and intelligence interests of other countries. *See* Exhibit 4 at paragraph 8 and Exhibit 5 at paragraph 9. In fact, the United States' ability to seek and obtain assurances from a foreign government depends on its ability to treat its dealings with the foreign government with discretion. *Id.* The United States government does not unilaterally make public any specific assurances or other precautionary measures obtained, because such disclosure would have a chilling effect on and cause damage to our ability to conduct foreign relations. Releasing these communications outside the Executive Branch could have a chilling effect on other governments' willingness to communicate frankly on such issues. *See* Exhibit 4 at paragraph 8 and Exhibit 5 at paragraphs 9-10. This could impede our country's ability to obtain vital cooperation from concerned governments with respect to military, law enforcement and intelligence efforts related to the war on terrorism. *See* Exhibit 4 at paragraph 8 and Exhibit 5 at paragraph 12. Similar concerns exist with respect to publicly releasing the DCO's transfer determinations prior to the completion of the diplomatic discussions described above. The DOD does not unilaterally release information about which detainees have been approved for transfer to any particular country for release or to remain under the control of that country's government.[4] Until the diplomatic process described in Exhibit 5 is completed for a particular detainee, the DOD's election to transfer that detainee cannot be effectuated and will not be until those diplomatic discussions yield the required assurances regarding the treatment of that detainee upon his return. Even after those assurances are received from the receiving government, DOD's election to return a detainee to that country can be revisited if new information is received, with respect to the sufficiency of the assurances or otherwise, warranting further consideration. That authority exists until the detainee is actually transferred to the receiving country. OARDEC advises the DCO regarding the status of transfer discussions (led

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[3] Ambassador Prosper supervised the operation of the Department of State Office of War Crime Issues and since September 11, 2001, he has played a key role in maintaining a diplomatic dialogue with foreign governments whose nationals have been captured in connection with the armed conflict with the Taliban and al Qaeda and who are detained by the DOD at Guantanamo Bay. *See* Exhibit 5 at paragraph 1. Ambassador Prosper has recently left this position but his declaration is still an accurate reflection of United States government policy and practice regarding detainee transfers. This document was admitted in numerous Guantanamo detainee habeas cases pending in District Court in the District of Columbia.

[4] As noted below, this issue is the subject of litigation in Guantanamo detainee habeas litigation ongoing in the District Court for the District of Columbia.

by Department of State) that could ultimately implement the DCO's transfer decisions. Through these updates, the DCO has the discretion and the opportunity to modify his transfer proposal or terminate any pending transfer arrangements, subject to his evaluation of the adequacy of treatment assurances or any other information brought to his attention by individuals within DOD or another U.S. government agency. The DCO has, in fact, done so.

m. Furthermore, the DOD does not advise the detainees regarding a decision to transfer them to a third country until close to the time of their transfer. Because the diplomatic discussion process described above takes time and may not ultimately result in the return of a detainee to a particular third country, the detainees are not advised of their potential transfer until the diplomatic discussions are satisfactorily completed and logistical arrangements are made for their return. In one circumstance, detainees have become frustrated with what they perceive to be a lack of timely progress in effectuating their transfer from Guantanamo. Those detainees have acted out violently by destroying government property. The military officials at JTF-Guantanamo who are responsible for maintaining the safety and security of the detainees believe that such adverse reactions would increase if additional detainees were advised of the potential decision to transfer them from Guantanamo before satisfactory diplomatic and logistical arrangements are completed.

n. Even after a transfer is completed, the DOD does not publicly acknowledge the identities of the detainees who have left Guantanamo, due to concerns about the security and safety of those detainees if a public statement is made regarding their return. It is the expectation of the DOD that these detainees will be assimilated into the receiving country's society and/or legal system by representatives of the receiving country's government. Publicly disclosing which individuals have returned to the other country would inform individuals in the receiving country or other countries about who has left Guantanamo for return to that country, including any individuals or organization that desire to harm the detainee for statements made during the CSRT or ARB process that indicated the detainee cooperated with U.S. personnel and provided information perceived as sensitive or harmful to such individuals or organizations.

o. To date, 20 detainees have left Guantanamo as a result of the ARB process. Over 130 are pending potential transfer, subject to diplomatic and logistical details being completed.

4. **The Search Conducted for Documents Related to ARBs**

a. The first round of ARBs began in December 2004 and was completed in January 2006. In total, 464 ARBs were held during that time frame.[5]

b. OARDEC maintains separate files for each ARB in its headquarters in Arlington, Virginia. All of the documents requested in plaintiff's FOIA request for ARB information were contained in the ARB files in OARDEC's Virginia office.

c. To search for documents responsive to this part of the FOIA request, members of OARDEC's legal staff reviewed OARDEC's ARB files. The search date was June 6, 2005 and the search was conducted on files that were in OARDEC's Virginia office as of that day. When the staff members found responsive documents, those documents were pulled from the file, copied, and set aside for further review to determine whether any portions of them were subject to any FOIA exemption. This search and review process took several weeks.

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[5] Not all individuals detained by the DOD at Guantanamo are eligible for the ARB process. When the ARB process began in December 2004, there were approximately 550 detainees detained by the DOD at Guantanamo. (The actual number of detainees is classified). Currently, there are approximately 490 such detainees at Guantanamo. The following detainees were not eligible for processing through the ARB process: detainees who were found to no longer meet the criteria to be classified as enemy combatants through the CSRT process (Paragraph 1 of Exhibit 2), detainees who the President of the United States has determined to be subject to his Military Order of November 13, 2001and detainees who had already been approved for transfer through the process that existed prior to the creation of the ARB process. *See* Exhibit

d. This search ultimately found responsive documents in five of the six categories requested by plaintiff, as discussed below.

5. **The ARB Documents Produced to Plaintiff**

a. **"Transcripts of all testimony given at ARB hearings"**

As of the search date, the transcripts of 85 ARBs had been finalized and forwarded from Guantanamo to OARDEC headquarters in Virginia. This included transcripts where the detainee did not attend the ARB session. These documents were produced to plaintiff with the third party and detainee-identifying withholdings pursuant to Exemption 6 noted below in paragraph 15a. They encompass the following Bates number ranges: 385-416, 419-434, 441-502, 510-589, 593-638, 643-667, 672-694, 697-748, 755-815, 823-943 and 1431-1445.

b. **"All written statements provided by any detainee"**

As of the search date, twelve detainees had provided written statements for use at an ARB proceeding. These documents were produced to plaintiff with the witholdings of third party and detainee-identifying withholdings pursuant to Exemption 6 noted below in paragraph 15a. They encompass the following Bates numbers: 417-18, 435-440, 503-509, 590-592, 639-642, 668-671, 695-696, 719A-719B, 749-754, 816-822, 873A, 912A-912X.

c. **"All documents that have been provided by any detainee .... to their [sic] assigned personal representative...."**

1 at paragraphs 2.e.1and 2.e.ii Additionally, some detainees were transferred from Guantanamo before their ARBs were held.

As of the search date, two detainees had provided documents (other than the written statements referenced in paragraph b above) to an Assisting Military Officer for use at an ARB proceeding. ("Personal representatives" assist the detainees at CSRTs, not ARBs. The AMO serves a comparable role at the ARB and plaintiff's request was construed as asking for documents provided by the detainee to his AMO). These documents were produced to plaintiff with the third party and detainee-identifying withholdings pursuant to Exemption 6 noted below in paragraph 15a and 15b. These documents are letters sent to the detainee at Guantanamo by family members and include those individuals' addresses. They encompass the following Bates numbers: 623A-623O and 903-912X.

d. **"Affidavits submitted by witnesses to the ARB"**

There are no witnesses at ARBs so there were no documents responsive to this request.

e. **"The allegations against the detainees being held in Guantanamo Bay, Cuba"**

There are no "allegations" against the detainee at an ARB. This request was construed as asking for the unclassified written summary that contains the primary factors favoring the detainee's continued detention and the primary factors favoring his release or transfer. The parties agreed that the DOD would produce the summaries that were provided to each detainee who had been the subject of an ARB as of the date of the search. The written summaries for 125 detainees were produced to plaintiff with the detainee-identifying withholdings pursuant to Exemption 6 as noted below in paragraph 15a. They encompass the following Bates numbers: 944-1242.

f. **"Details and explanations of the decisions made to release or transfer detainees"**

A "decision to release or transfer" a detainee is made by the DCO following his review of the recommendation of the Administrative Review Board (found in the "Record of Proceedings and Basis for ARB Decision.") and the accomplishment of the diplomatic process described in paragraphs 3j-3l. The DCO's action is documented in a memorandum. As of the time of the search on June 6, 2005, the DCO had elected to commence the transfer process for 23 such detainees. These documents were produced to plaintiff with the detainee-identifying withholdings pursuant to Exemptions 5 and 7 as noted below in paragraph 16.[6] They encompass the following Bates numbers: 279-384.

Documents Responsive to the Request for Disciplinary Records Related to Allegations of Mistreatment at Guantanamo.

6. **Background on military command structure at Guantanamo Bay.** The Joint Task Force-Guantanamo (JTF-Guantanamo) consists of several thousand U.S. service members and civilians representing the Army, Navy, Air Force, Marine Corps and Coast Guard. The mission of JTF-Guantanamo is to conduct detention and intelligence gathering operations in support of the Global War on Terrorism, to coordinate and implement detainee-screening operations and to support law enforcement and war crime investigations. JTF-Guantanamo's parent command is United States Southern Command (USSOUTHCOM). Both JTF-Guantanamo and USSOUTHCOM have legal offices responsible for providing legal advice to the commanders of each organization. When the DOD receives FOIA requests for documents regarding the DOD's detainee operations at Guantanamo Bay, Cuba, those requests are forwarded to USSOUTHCOM who then forwards the

[6] Withholdings were also made of identifying information for DOD personnel involved in the ARB process under Exemption 6, of classified information under Exemption 1 and of the recommendations of the ARB panel and the ARB legal advisor under Exemption 5. Because plaintiff has advised that it is not contesting those withholdings, this declaration does not discuss that issue.

requests to JTF-Guantanamo. When responsive documents are found by JTF-Guantanamo, they are forwarded to USSOUTHCOM for review and are then forwarded to the Pentagon for final processing. USSOUTHCOM also conducts its own search for responsive documents in its files and forwards responsive documents to the Pentagon. The legal offices of each organization were involved in this processing of the FOIA requests made by plaintiff in this case.

7. Plaintiff requested "copies of documents sufficient to identify each disciplinary action initiated since January 2002 as the result of an allegation of mistreatment at Guantanamo Bay, Cuba, including, but not limited to the date the action was initiated, the name of the troop(s) charged, the status of the action, and a description of any disciplinary action recommended or taken." To search for documents responsive to this part of the FOIA request, members of the Joint Task Force-Guantanamo (JTF-GTMO) legal staff searched and reviewed JTF-GTMO's files for responsive documents regarding disciplinary actions. Among other duties, this office is responsible for advising the commander of JTF-GTMO regarding investigations and potential disciplinary actions to be taken against individuals who engage in misconduct at Guantanamo. This office also consulted and coordinated with individuals at the legal office at USSOUTHCOM. These searches and consultations occurred during the month of June 2005.

8. The disciplinary files maintained at Guantanamo typically contain a record of the disciplinary action and a report of the investigation done into the alleged conduct. When the staff members found responsive documents, those documents were pulled from the file, copied, and set aside for further review to determine whether any portions of them were subject to any FOIA exemption. As

a result of that search, various documents were produced to plaintiff with the withholdings noted below in paragraph 17. They encompass the following Bates numbers: 005-278 and 1243-1376:

a. Bates 005-025: investigation into alleged misconduct in May 2002 at the detention hospital. This involved several interactions between an agitated detainee and a guard at the hospital. The file contained a letter reprimanding the Commander of the military police battalion for failing to establish a positive leadership climate and the investigative inquiry into the allegations that led to this discipline. The inquiry includes statements by the subject of the investigation and military witnesses.

b. Bates 026-031: investigation into alleged misconduct in September 2002. The file contained a form reflecting the nonjudicial punishment imposed on a soldier for assault, based on his attempt to spray a disruptive detainee with a water hose, and the soldier's statement about the incident.

c. Bates 032-057: investigation into alleged misconduct in October 2004. The file contained the nonjudicial punishment imposed on a soldier for assault after he struck a detainee on the mouth with his fist as he tried to subdue him and the investigative inquiry into the allegations that led to this discipline. The inquiry includes statements by the subject of the investigation and military witnesses.

d. Bates 058-079: investigation into alleged misconduct in March 2003 where a guard was alleged to have inappropriately used pepper spray on a detainee. This includes a draft court-martial charge sheet for an assault charge, a nonjudicial punishment form for the same allegation, the commander's recommendation regarding discipline and the investigatory inquiry into the allegations that led to this discipline. The inquiry includes statements by the subject of the investigation and military witnesses, as well as the standard operating procedures for pepper spray.

e. Bates 080-129: investigation into alleged misconduct in April 2003 where a guard was alleged to have struck a detainee, to have failed to properly secure a detainee's cell and to have been disrespectful to his superior officer. This includes the nonjudicial punishment imposed on the guard for assault, dereliction of duty and disrespect towards a commissioned officers and the investigatory inquiry into the allegations that led to this discipline. The inquiry includes the findings and recommendations of the investigating officer, statements by the guard and other military witnesses, the legal advice provided to the commander regarding the investigation and the recommendations of various commanders regarding the discipline that should be imposed.

f. Bates 130-278: investigation into alleged misconduct in January 2004 where a guard was alleged to have verbally harassed a detainee and splashed a cleaning product in his face. This includes the nonjudicial punishment imposed on the guard for assault and violation of a military regulation and the investigatory inquiry into the allegations that led to this discipline. The inquiry includes the findings and recommendations of the investigating officer, statements by the guard and other military witnesses, the legal advice provided to the commander regarding the investigation and the recommendations of various commanders regarding the discipline that should be imposed.

g. Bates 1243-1315: investigation into alleged misconduct in March 2004 where guards were alleged to have mistreated a detainee by not taking him to a restroom promptly enough. These allegations were not substantiated. The investigative inquiry includes the findings and recommendations of the investigating officer, statements by the guard and other military witnesses, the legal advice provided to the commander regarding the investigation and the recommendations of various commanders regarding the investigation.

h. Bates 1316-1376: investigation into alleged mistreatment in April 2003 where interrogators were alleged to have mistreated a detainee during an interrogation. This includes a letter reprimanding the Director of the Joint Intelligence Group, the findings and recommendations of the investigating officer, statements by the interrogators and other military witnesses, medical records of the detainee, the legal advice provided to the commander regarding the investigation and the recommendations of various commanders regarding the discipline that should be imposed.

9. The Department of Defense's Office of Public Affairs was also asked to search for responsive documents. That search yielded two documents that consisted of summaries of substantiated abuse allegations and were produced as Bates number 001-004 and 1377-1379 without any withholding. A similar summary document was found during the search of JTF-Guantanamo's files and was produced as Bates 1382-1383B without any withholding.

Documents Responsive to the Request for Documents Regarding Detainee-Against-Detainee Abuse

10. Plaintiff requested "copies of documents sufficient to identify each allegation of detainee-against-detainee abuse at Guantanamo Bay, Cuba, since January 2002, including a description of the alleged abuse and any action(s) in response." Plaintiff later agreed to limit this request to allegations reported by military personnel to their superiors or to other components of the DOD. This request was forwarded to JTF-Guantanamo and USSOUTHCOM, through the process described in paragraph 6. As a result of the search conducted in June 2005, various documents were produced to plaintiff with the withholdings noted below in paragraph 19. They encompass the

following Bates numbers: 1384-1430. These documents constitute the reporting of the detainee-on-detainee abuse allegations that were recorded by military personnel in their official duties.

Number of Allegations of Abuse at Guantanamo That Have Been Reported through the Combatant Status Review Tribunals.

11. Plaintiff requested "documents sufficient to identify the number of allegations of abuse at Guantanamo Bay, Cuba, since January 2002 that have been reported through the Combatant Status Review Tribunals." This request was forwarded to OARDEC. OARDEC maintained this statistic in its normal course of business and provided the number of such allegations that had arisen through the CSRT process. The number of these abuse allegations was produced to plaintiff without withholding.

Number of Allegations of Mistreatment Committed by Translators

12. Plaintiff requested "copies of documents sufficient to identify the number of allegations of mistreatment committed by translators at Guantanamo Bay, Cuba, since January 2002, including a description of the alleged mistreatment and any action(s) in response." Plaintiff later agreed to limit this request to allegations reported by military personnel to their superiors or to other components of the DOD. This request was forwarded through the process described in paragraph 6. No responsive documents were found in either organization.

Number of Detainees Transferred or Released from Guantanamo Who Had Been Treated for Medical Problems During Their Detention

13. Plaintiff requested "copies of documents sufficient to identify the number of detainees transferred or released from Guantanamo who had been treated for medical problems during their detention." Plaintiff agreed that this request would not be construed to cover routine physical

examinations undergone by detainees. This request was forwarded through the process described in paragraph 6 above. The Joint Medical Group-Guantanamo (JMG-Guantanamo) is responsible for providing medical care to detainees at Guantanamo and for maintaining the medical records that document that care. These records are often extremely voluminous. When that organization was tasked with responding to the request, JMG-Guantanamo personnel inspected the medical files of each of the 234 detainees who had left Guantanamo as of the search date of June 1, 2005. They were unable to find the medical files of three of these detainees. Each of these files contained documents that demonstrated the detainee had received medical care beyond routine physical examinations. Plaintiff was advised that the number of detainees who had been transferred or released from Guantanamo after being treated for medical problems during their detention was "at least 231" of the 234 detainees who had left.

Construction Contracts Relating to Work Performed at Guantanamo Bay

14. Plaintiff requested "copies of documents sufficient to identify each construction contract relating to work performed at Guantanamo Bay, Cuba, since January 2002, including the name of the contractor, the contract amount, and a description of the services to be provided." Plaintiff later agreed that the DOD could comply with this request by sending a summary document listing the name of the contractor, the contract amount and a brief description of the services provided. This request was forwarded to Naval Facilities Engineering Command, Atlantic. That organization is responsible for maintaining contracting information for construction at JTF-Guantanamo. The search date for their computer search was June 18, 2005. This information was provided to plaintiff as Bates 1380-1381.

The Information Withheld from the ARB Documents

15. **Information that identifies detainees and third parties in the written summary, transcripts, statements and documents.**

a. Regarding the ARB documents referenced in paragraphs 5a-5c and 5e, the information withheld under Exemption 6 fell into five general categories: (i) internee serial numbers (ISN)[7]; (ii) names and home locales of the detainees and their families (including addresses); (iii) names of third parties identified by detainees in the course of their testimony, or mentioned in detainee statements or documents (other than public figures, such as, for example, Hamid Karzai or Mullah Omar); (iv) nationalities or countries of origin of the detainees, and information sufficient to reveal their nationalities or countries of origin, such as, for example, the country a detainee departed at a certain point in time, where that information would reveal that the departed county was the detainee's country of origin; and (v) miscellaneous personal information which, together with other information, could be used to identify the detainee or third party, such as: his tribal affiliation, native language, where the detainee was captured, his age, the college he attended, and the ages of his children.[8] As with the CSRTs, the withholdings to the ARB documents described above were made under FOIA Exemption 6 because disclosure would result in a clearly unwarranted invasion of the privacy of the detainees and third parties referenced in these documents

b. As noted above, some of the withholdings in these documents were of names and other identifying information about third parties. Some detainees referenced family members and other individuals during their testimony at the ARBs. Two detainees provided letters from their family members to their ARB for its consideration. These letters contain the names and addresses of these family members.

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[7] The ISN is an identifying number unique to the detainee, analogous to a social security number. A full ISN is a 12-digit alpha numeric identifier that incorporates certain abbreviated and classified information about the detainee. DOD also uses shortened ISNs consisting of three, four or five digits to identify detainees. The shortened ISNs are still unique to the detainee. It is the shortened ISNs that were redacted from the produced documents.

[8] Withholdings were also made of identifying information for DOD personnel involved in the ARB process. Because

1) With respect to the first detainee, his testimony and documents were provided as Bates 616-623O and are attached hereto as Exhibit 6. In his testimony to the ARB, the detainee admitted that he had been a driver for a Taliban leader. *Id.* at 617-618. He claimed, however, that he only worked for the Taliban because he needed money for medical treatment. *Id.* at 618. The transcript thus suggests that the detainee cooperated with the ARB and, in doing so, disclaimed any loyalty to the Taliban. The detainee also proffered to the ARB four pieces of personal correspondence, which contained the names and addresses of the detainee's family members. *Id.* at 616, 612A-O. A member of the press was present at this detainee's ARB proceeding but was not provided with a copy of the family letters submitted to the ARB by the detainee. Furthermore, the letters were not read aloud nor were the contents described in detail.

2) Regarding the second detainee, his testimony and documents were provided as Bates 903-912X and are attached hereto as Exhibit 7. The second detainee also provided testimony to the ARB about the Taliban, which continues to be engaged in active hostilities in Afghanistan.[9] He stated, "These are the people who have destroyed Afghanistan, so I despise these people." *Id.* at 905. The detainee was reluctant to provide the ARB with correspondence from his wife, noting, "It is a big shame in our culture to read my wife's letter for you, but now I am in a very tough situation with the letter from my wife. Do you want it as evidence." *Id.* at 907. The detainee ultimately

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plaintiff has advised that it is not contesting that withholding, this declaration does not discuss that issue.

[9] *See* http://www.washingtonpost.com/wp-dyn/content/article/2006/02/21/AR2006022100254.html.

provided the letter, and correspondence from other family members, to the ARB. No members of the press were present at this detainee's ARB proceeding.

c. DOD has serious concerns that disclosure of the names and addresses of these family members would place them at serious risk of harm and thus would constitute a clearly unwarranted invasion of their personal privacy. In addition to the reasons set forth in my prior declaration, DOD believes that the particular testimony of these detainees is likely to be perceived by members of the Taliban (including the former associates of one detainee) as hostile and even traitorous. In that event, such persons may well attempt to retaliate against the detainees' loved ones, whose names and addresses are contained within the documents. Id.

d. Although, DOD does not believe that the applicability of Exemption 6 turns on an individual's reasonable expectation of privacy, the DOD has determined that the record in this case suggests that the family members would have such an expectation. Even though a member of the press did attend one of the detainees' ARBs, there is no indication in the record that either detainee had reason to expect that the transcript of the proceeding (if they were even aware that a transcript was being created) would be disclosed outside of DOD, or even Guantanamo. The detainees' family members would have had even less reason to expect that their names and addresses would be released to the general public through the ARB process, much less publicly linked with their family members' unfavorable testimony about the Taliban. In fact, the second detainee testified that it would be considered shameful in his culture for his wife's letter to be given to the ARB. His concerns would surely be multiplied if he was aware that his wife's letter would be released to the general public at large and that an American news organization planned to use that letter to track down his wife and subject her to an interview. Her privacy concerns would likewise be implicated by the public release of her name and address. Under this fact pattern, the privacy implications of Exemption 6 are clearly present and the release of the family members' addresses and names would constitute a clearly unwarranted invasion of their personal privacy. The DOD determined also that the public interest in the release of this information, on the other hand, is negligible since using the names of these family members to contact them will not shed any additional light on the DOD's performance of its duties relative to these detainees' ARBs.

16. **Information that identifies detainees in the transfer/release documents.** In the documents described in paragraph 5f, the names, nationalities and ISNs of the 23 detainees were withheld from release under Exemptions 5 and 6.

a. Seventeen of the 23 detainees referenced in these transfer documents remain at Guantanamo, pending the resolution of the diplomatic discussions referenced above. Seven of these are petitioners in the habeas litigation pending in federal court and four of those seven have filed demands for advance notice of any transfer from Guantanamo. The judges in their cases have granted their motions and the DOD is appealing those decisions. The remaining ten are not habeas petitioners.

b. Of the six detainees who have left Guantanamo, one was a habeas petitioner in a case where we advised the court and his counsel of his transfer after it was effectuated and have filed a document to that effect on the court's public website. Under those facts, the concerns raised below are not implicated for that detainee and the document referencing the DCO action in his case will be released to the AP with his identity unredacted. The documents for the other five departed detainees is being withheld pursuant to Exemption 6, below.

c. Exemption 5:

1) Exemption 5 authorizes the withholding of information under the deliberative process privilege, the general purpose of which is to prevent injury to the quality of agency decisions. Here, the quality of the DOD's decision regarding the transfer of detainees from Guantanamo would be injured by the release of the identities of the detainees described in paragraph 16a above prior to the completion of diplomatic arrangements required to effectuate the DCO's desire to transfer them from Guantanamo. As explained in detail above and in the Declarations of Mr. Waxman and Ambassador Prosper at Exhibits 4 and 5, the transfer of the detainees referenced in these documents cannot and will not be effectuated until diplomatic discussions are completed regarding their return and until the DCO is informed of the results of those discussions and permits the transfer to proceed. The action of the DCO reflected in these documents is predecisional in that it is dependent on other The United States' ability to seek and obtain transfer assurances from foreign governments would be adversely affected by the public release of the DCO's transfer decisions prior to the completion of the diplomatic discussions. This interference with the diplomatic process needed to effectuate a transfer would risk circumvention of our agency's practices regarding the transfer of detainees which, in turn, would impede the Executive's ability to take necessary actions regarding enemy combatants being held by the DOD in a time of war. Release of the information would circumvent the established polices and procedures for effectuating transfers of detainees from Guantanamo.

2) Furthermore, under Exemption 5, this information is protected if it "would not be

available by law to a party ... in litigation with the agency." As part of the habeas litigation involving Guantanamo detainees, the counsel representing some of the detainees have filed demands for advance notice of their clients' transfer from Guantanamo or for an outright prohibition on any such transfer. The DOD has vigorously opposed these motions, contending, *inter alia*, that it was inappropriate for the judicial branch to issue orders that impede the ability of the Executive to effectuate the removal of detainees from Guantanamo. DOD has opposed the disclosure of this information regarding future plans for transfers of detainees in numerous habeas cases pending in the District of Columbia, due to, among other things, concerns similar to those that bring this information within the ambit of Exemption 5. [1]

To date, four district court judges have rejected the detainees' request for advance notice that they are going to be transferred from Guantanamo. Eight of the district court judges have granted such requests and these decisions either have been or are in the process of being appealed. Disclosure of the identifying information in this case could moot some of those appeals, at least in part. DOD has revealed its plans to transfer detainees only after all necessary diplomatic assurances were obtained and the ultimate decision for transfer was made, i.e., the initial DCO decision approving transfer was ready to be effectuated. Further, DoD has revealed its plans for transfers only as necessary to adhere to or comply with a court order.

d. Exemption 6: This information is also being withheld pursuant to Exemption 6. (For the documents covering the five detainees who have departed Guantanamo, this is the only FOIA exemption being asserted, pursuant to the concerns expressed in paragraph 3n above.) The exact date of the departure and arrival is classified, due to the DOD's concerns over the safety and security of its personnel and the detainees. Each of these detainees was involved with al Qaeda, the Taliban and/or affiliated terrorist organizations. These organizations would, of course, be interested in whether some of its members are returning from Guantanamo and who those members are. Even though the date of the detainee's return cannot be discerned from the DCO decision documents, these documents do reveal which detainees will likely be returning. This creates a security risk for the named detainee and his family members and associates since there could be individuals who desire to harm the detainee and/or to retaliate against him or his family and associates. These individuals will now know who has been approved to return and can act accordingly. Pursuant to this Court's order, the DOD will now be releasing the CSRT and ARB transcripts and documents that link particular detainees to the detailed personal stories revealed in the transcripts and documents or that otherwise identifies them as detainees at Guantanamo. If the DOD also releases the identities of detainees who have been approved for release or transfer from Guantanamo, the public, including any organizations or individuals who intend to harm the detainee or his family, will learn of that decision in advance of it happening. It would further enable those adverse parties to inflict harm on the detainees or their family members. The DOD determined that the privacy interest of the detainees and their family members in their personal safety in connection with their transfer is not outweighed by any public interest in these materials. The DOD has already provided the public with aggregate data on the results of the ARB process and the decision of the DCO in the 464 ARBs held in Round 1.[10] *See* http://www.defenselink.mil/news/Jan2006/d20060130arb.pdf. That document reflects that the DCO has determined that over 130 detainees can be transferred out

[10] Although 464 ARBs were held, one detainee who had an ARB decision was subsequently determined to be ineligible for the ARB process. Accordingly, only 463 decisions were issued by the DCO.

of Guantanamo. As of February 22, 2006, 110 of those detainees remain at Guantanamo, pending the completion of the diplomatic discussions detailed below. The DOD determined that providing the identifying information on the detainees who the DCO has approved for release or transfer will not serve any public interest in the agency's decision-making process regarding the ARB or transfer process. The decisions made by the ARB and the DCO are based, on classified information that cannot be released to the public, including plaintiff. Therefore, the underpinnings and propriety of a transfer decision cannot be substantively analyzed by plaintiff or any other FOIA requester in an accurate manner. Given that, the public's interest in the withheld information is negligible.

The Detainee-Identifying Information Withheld from the Documents that Allege Detainee Abuse by U.S. Government Personnel

17. Various detainee identifying information was withheld from these documents, specifically the ISNs and names of the detainees involved in the alleged incidents described in paragraph 8 above.[11] Additionally, the medical records of one detainee were included in the investigative file at Bates 1347-1350). This information was withheld pursuant to Exemptions 7(C) and 6.

a. Exemption 7: The records described in paragraph 8 above were records and information compiled for law enforcement purposes, i.e military law. The Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 801 et seq, was enacted by Congress as part of its responsibilities to oversee military justice. The UCMJ is the military's criminal code and was originally enacted in 1950. It includes a complete set of criminal laws, including many crimes that are punishable under civilian law (e.g., murder, rape, drug use, larceny, drunk driving, etc.) and it also punishes other conduct that

[11] Information identifying DOD personnel involved in these investigations was also withheld. Plaintiff has advised that it is not contesting the withholding of this information so this declaration does not discuss that topic.

affects good order and discipline in the military. The UCMJ is implemented through Executive Orders of the President of the United States pursuant to his authority under Article 36, UCMJ (10 USC § 836). In the case of the records described in paragraph 8 above, investigations were initiated to determine whether the military personnel had engaged in any criminal misconduct and, if so, how those personnel should be disciplined for that misconduct. Investigating officers were appointed by the Commander of JTF-Guantanamo to conduct the investigations. The investigation officers were empowered to interview witnesses and were required to inform the subject of the investigation that he had a right against-self incrimination, as stated in Article 31, UCMJ (10 U.S.C. § 831). Upon completion of the investigation, the commanding officer reviewed the investigative documents and determined whether to hold the subject criminally responsible for any substantiated misconduct that violates the UCMJ. The commander can punish the DOD member through a court-martial, nonjudicial punishment pursuant to 10 U.S.C. § 815 or through a lesser administrative punishment such as a letter of reprimand. Accordingly, these records and the information within them were compiled for law enforcement purposes (the enforcement of the UCMJ).

b. The names and ISNs of the detainees named in these records were withheld pursuant to Exemption 7(C) as personal information contained within them. The DOD withheld this information from disclosure because its release could reasonably be expected to constitute an unwarranted invasion of the detainees' personal privacy. There is a strong privacy interest inherent in law enforcement records since their release is inherently more invasive of privacy than records withheld under Exemption 6. As the alleged victims of abusive conduct by U.S. government personnel, the detainees have a protectible privacy interest in avoiding disclosure of their identities in connection with allegations of abuse by U.S. military personnel. The disclosure of their identities would permit the public to know which detainees had been involved in the incidents described in the documents and thus which detainees had been subject to the misconduct by the guards. This would be an unwarranted invasion of their personal privacy. The DOD weighed the magnitude of this privacy interest against any public interest that would be served by the disclosure of that information relative to shedding light on the DOD's performance of its duties. It was determined that the public interest in disclosing this information did not outweigh the legitimate privacy interest of the detainees to be free from public exposure regarding the incidents.

c. Exemption 6: Additionally, under Exemption 6, the detainees identified in these documents have a privacy interest that should be protected. Release of their identifying information would constitute a clearly unwarranted invasion of their personal privacy. Releasing the fact that these particular individuals were victims of alleged criminal activity by DOD personnel would expose them to unwarranted public scrutiny in that light. Further, some of the documents disclosed to AP were medical records and discussion of medical conditions of particular detainees, information in which the detainees have a particularly acute privacy interest.

d. For both Exemptions 6 and 7, there is no reason to believe that the detainees named in those documents had any expectation that their identities would be made public, through FOIA or otherwise, in connection with allegations of abuse. Indeed, there is no reason to believe that the detainees are even aware of the existence of these documents.

18. Furthermore, in evaluating the public interest in the release of the detainee-identifying information, it is important to consider the extensive information the DOD has already released

regarding allegations of abuse at Guantanamo. The DOD has made public the results of the broad investigations that were conducted into these types of allegations. As the US government has noted, "the United States has taken and continues to take allegations of abuse [at Guantanamo] very seriously. Specifically, in response to specific complaints of abuse ... at Guantanamo Bay, the DOD has ordered a number of studies that focused, *inter alia*, on detainee operations and interrogation methods to determine if there was merit to the complaints of mistreatment." *See* http://www.state.gov/g/drl/rls/45738.htm. The results of these investigations are available on the DOD's public website at http://www.defenselink.mil/news/detainee_investigations.html. This includes the investigations into FBI allegations of detainee abuse at Guantanamo, the investigation of Admiral Church into allegations of abusive interrogation techniques and an assessment of detainee medical operations for Guantanamo, among others. For each of these public releases, the DOD did not produce information on which detainees were the alleged victims of these abuse allegations. This decision was made consistent with the DOD's determination that the detainee's privacy interest outweighed any public interest in receiving access to this information.

The Information Withheld from the Documents that Allege Detainee-on-Detainee Abuse

19. Various detainee identifying information was withheld from these documents, specifically the ISNs and names of the detainees involved in the alleged incidents described in paragraph 10 above. This information was withheld pursuant to Exemptions 7(C) and 6.[12]

a. Exemption 7: The records described in paragraph 10 above were records and information compiled for law enforcement purposes. This information is maintained in the Detainee

[12] Withholdings were also made of identifying information for DOD personnel. Because plaintiff has advised that it is

Information Management System (DIMS). This is an automated system used at Guantanamo Bay to document the management of detainees detained at Guantanamo. DIMS provides an administrative method for members of the Joint Detention Group, who enforce the policies and rules governing the detention of the enemy combatants to document the detainees' compliance with those requirements. The detainees are advised of the rules and regulations regarding their behavior in detention. When a situation arises where it appears that two or more detainees are involved in abusive conduct towards each other (whether verbal or physical), the DOD personnel who observe the incident will record the results of their investigation and observations into the DIMS system. This investigation then serves as the basis for a potential punishment. Violations of the rules and policies are punished by various methods including loss of comfort items, transfer to different parts of the camp and restrictions on recreation opportunities. These disciplinary procedures are the law enforcement mechanism used for governing the behavior of these alien enemy combatants and the investigative files maintained in DIMS are a critical part of that law enforcement mechanism. Maintaining order and discipline amount the detainee population, and punishing their misconduct, is a critical law enforcement function of DOD personnel at Guantanamo. The record documenting the detainees' misconduct is compiled and maintained in DIMS, in order to permit all guard personnel to be informed of detainees' past actions. This provides continuity in the law enforcement process and also permits the guards to maintain a history of violations made by particular detainees.

b. The names and ISNs of the detainees named in these law enforcement records were withheld pursuant to Exemption 7(C) as personal information contained within them. The DOD withheld this information from disclosure because its release could reasonably be expected to

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not contesting that withholding, this declaration does not discuss that issue.

constitute an unwarranted invasion of the detainees' personal privacy. There is a strong privacy interest inherent in law enforcement records since their release is inherently more invasive of privacy than records withheld under Exemption 6. The public release of information about which detainees have engaged in abusive behavior towards other detainees legitimately implicates the privacy interests of both the aggressor and the victim in the incidents. In most cases, the disclosure of the name of a victim of an offense would be an invasion of the individual's personal privacy as it would advise the public that he had been assaulted or attached or threatened by another detainee. The fact that the victim here is a detainee does not change the DOD's analysis of that privacy interest. Similarly, releasing the identity of the alleged aggressor in the incident also would be an invasion of his personal privacy, as it would advise the public that he had engaged in abusive conduct towards another detainee. Their respective family members will also learn of this abusive conduct and which detainee had victimized the other, or which detainees engaged in mutually abusive conduct. The DOD determined that the withheld information does not contribute significantly to the public understanding of our operations or activities at Guantanamo. The DOD has provided plaintiff with the documents that discuss the detainee misconduct and the repercussions experienced by the detainees who engaged in it. The DOD determined that providing the names of the detainees involved in the incidents does not shed any light on our agency's performance of its duties relative to these detainees. The documents provided to plaintiff demonstrate the DOD's performance of its duty to take action in response to detainee conduct that violates the rules and policies of the detention facility, including when those detainees attempt to harm other detainees.

c. Exemption 6: Additionally, under Exemption 6, the detainees identified in these documents have a privacy interest that should be protected. Release of their identifying information would constitute a clearly unwarranted invasion of their personal privacy. Releasing the fact that these particular individuals were victims of alleged criminal activity by other detainees would expose them to unwarranted public scrutiny in that light.

d. For both Exemptions 6 and 7, there is no reason to believe that the detainees named in those documents had any expectation that their identities would be made public, through FOIA or otherwise, in connection with allegations of abuse. Indeed, there is no reason to believe that the detainees are even aware of the existence of these documents.

Documents Referred to in DOD's Memorandum of Law

20. Attached hereto as Exhibit 1 is true copy of an Order of the Deputy Secretary of Defense, dated May 11, 2004, establishing administrative review procedures for enemy combatants in the control of the Department of Defense at Guantanamo Bay Naval Base, Cuba. It can also be found at http://www.defenselink.mil/news/May2004/d20040518gtmoreview.pdf.

21. Attached hereto as Exhibit 2 is a true copy of a Memorandum from the Designated Civilian Official, dated September 14, 2004, enclosing Implementation of Administrative Review Procedures for Enemy Combatants detained at Guantanamo Bay Naval Base, Cuba. It can also be found at http://www.defenselink.mil.news/Sep2004/d20040914adminreview.pdf.

22. Attached hereto as Exhibit 3 is the announcement of the appointment of the Secretary of the Navy to oversee the ARB process. It can also be found at http://www.defenselink.mil/releases/2004/nr20040623-0932.html.

23. Attached hereto as Exhibit 4 is a true and accurate copy of the Declaration of Matthew Waxman.

24. Attached hereto as Exhibit 5 is a true and accurate copy of the Declaration of Ambassador Pierre-Richard Prosper.

25. Attached hereto as Exhibit 6 is a true and accurate copy of the documents produced as Bates 616-623O.

26. Attached hereto as Exhibit 7 is a true and accurate copy of the documents produced as Bates 903-912X.

TOTAL P.02

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 22, 2006.

Karen L. Hecker

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